

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	02-0845
	:	
Implementation of the Restricted Call	:	
Registry Act	:	

**STAFF OF THE ILLINOIS COMMERCE COMMISSION'S  
MOTION TO WITHDRAW AND REPLACE FIRST NOTICE RULES**

Pursuant to 83 Ill. Adm. Code 200.190, Staff of the Illinois Commerce Commission ("Staff"), by and through its attorney, files its Motion to Withdraw and Replace First Notice Rules. In support thereof, Staff respectfully states as follows:

1. The Illinois Commerce Commission ("Commission") initiated this proceeding to implement P.A. 92-0795, the Restricted Call Registry Act ("Act").
2. The Commission entered an Order on December 17, 2002, which adopted emergency rules and authorized the submission of the first notice of proposed rules to the Secretary of State.
3. On June 30, 2003, the Governor signed P.A. 93-0049 that substantially amended the Act and affected the Commission's responsibilities under the Act.
4. The Federal Trade Commission ("FTC") and the Federal Communications Commission ("FCC") have both adopted rules on the subject of this rulemaking, with the rules of the FTC at 16 C.F.R. 310 and the rules of the FCC at 47 C.F.R. 64.1200. While there have been two district court rulings that challenge the FTC's do-not-call registry, the Illinois law remains in effect.

5. Staff has reviewed the originally proposed rules in conjunction with a review of P.A. 93-0049 and has determined that the rules submitted to the Secretary of State and published on January 10, 2003 at 27 Ill. Reg. 438 no longer implement the Act as amended by P.A. 93-0049.

6. Staff has drafted rules attached hereto as Appendix A to implement the Act as amended by P.A. 93-0049.

WHEREUPON, Staff moves this Commission to take administrative notice of P.A. 93-0049 and authorize the withdrawal of the rules proposed at 27 Ill. Reg. 438, pursuant to 1 Ill. Adm. Code 100.440.

Staff further moves that the Commission authorize the submission of the first notice of proposed rules, as represented in the draft Order attached to this motion as Appendix B, to the Secretary of State pursuant to Section 5-40 of the Illinois Administrative Procedure Act.

Respectfully submitted,



LINDA M. BUELL

Counsel for the Staff of the Illinois  
Commerce Commission

LINDA M. BUELL  
Office of General Counsel  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701  
[lbuell@icc.state.il.us](mailto:lbuell@icc.state.il.us)  
(217) 557-1142

October 1, 2003

TITLE 14: COMMERCE  
SUBTITLE A: REGULATION OF BUSINESS  
CHAPTER III: ILLINOIS COMMERCE COMMISSION

PART 300  
RESTRICTED CALL REGISTRY

SUBPART A: GENERAL PROVISIONS

Section	
300.10	Procedures Governed
300.20	Definitions
300.30	Federal Rules

SUBPART B: RESTRICTED CALL REGISTRY

Section	
300.100	Establishment and Maintenance of the Registry
300.110	Use of the Registry
300.120	Obligations of Telephone Solicitors
300.130	Enrollment of Residential Subscribers

SUBPART C: PUBLIC NOTIFICATION

Section	
300.200	Public Notification

SUBPART D: COMPLAINT PROCEDURES

Section	
300.300	Complaint Procedures

SUBPART E: VIOLATIONS

Section	
300.400	Relief
300.410	Exemptions

AUTHORITY: Implementing and authorized by the Restricted Call Registry Act [815 ILCS 402].

SOURCE: Emergency rules adopted at 27 Ill. Reg. 438, effective January 1, 2003, for a maximum of 150 days; adopted at 27 Ill. Reg. \_\_\_\_\_; effective \_\_\_\_\_.

SUBPART A: GENERAL PROVISIONS

## Section 300.10 Procedures Governed

The Restricted Call Registry Act [815 ILCS 402] concerns telephone solicitations. This Part establishes procedures for a Restricted Call Registry, methods to obtain the Registry, subscriber enrollment, public notification, complaints procedures, violations and relief.

## Section 300.20 Definitions

The following terms as used in this Part shall have the definitions shown:

"Act" means the Restricted Call Registry Act [815 ILCS 402].

"Commission" means the Illinois Commerce Commission.

*"Established business relationship" means the existence of an oral or written transaction, agreement, contract, or other legal state of affairs involving a person or entity and an existing customer under which both parties have a course of conduct or established pattern of activity for commercial or mercantile purposes and for the benefit or profit of both parties. A pattern of activity does not necessarily mean multiple previous contacts. The established business relationship must exist between the existing customer and the person or entity directly, and does not extend to any related business entity or other business organization of the person or entity or related to the person or entity or the person or entity's agent including but not limited to a parent corporation, subsidiary partnership, company or other corporation or affiliate. (Section 5 of the Act [815 ILCS 402/5])*

*"Existing customer" means an individual who has either entered into a transaction, agreement, contract, or other legal state of affairs between a person or entity and a residential subscriber under which the payment or exchange of consideration for any goods or services has taken place within the preceding 18 months or has been arranged to take place at a future time or opened or maintained a debit account, credit card account, or other credit or discount program offered by or in conjunction with the person or entity and has not requested the person or entity to close such account or terminate such program. (Section 5 of the Act)*

"Local exchange telecommunications company" means a local exchange telecommunications carrier certificated by the Illinois Commerce Commission to provide intra-exchange and/or inter-exchange service within the same market service area pursuant to Sections 13-209 and 13-210 of the Public Utilities Act [220 ILCS 5/13-209 and 13-210].

*"Registry" means the Restricted Call Registry established under the Act. (Section 5 of the Act)*

*"Residential subscriber" means a person or spouse who has subscribed to either residential telephone service from a local exchange company or public mobile services, as defined by Section 13-214 of the Public Utilities Act [220 ILCS 5/13-214], a guardian of the person or the person's spouse, or an individual who has power of attorney from or an authorized agent of the person or the person's spouse. (Section 5 of the Act)*

*"Telephone solicitation" means any voice communication over a telephone line from a live operator, through the use of an autodialer or autodialer system, as defined in Section 5 of the Automatic Telephone Dialers Act [815 ILCS 305/5], or by other means for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, or for the purposes of soliciting charitable contributions, but does not include communications:*

*to any residential subscriber with that subscriber's prior express invitation or permission when a voluntary 2-way communication between a person or entity and a residential subscriber has occurred with or without an exchange of consideration. A telephone solicitation is presumed not to be made at the express request of a subscriber if one of the following occurs, as applicable:*

*The telephone solicitation is made 30 business days after the last date on which the subscriber contacted a business with the purpose of inquiring about the potential purchase of goods or services.*

*The telephone solicitation is made 30 business days after the last date on which the subscriber consented to be contacted.*

*The telephone solicitation is made 30 business days after a product or service becomes available where the subscriber has made a request to the business for that product or service that is not then available, and requests a call when the product or service becomes available;*

*by or on behalf of any person or entity with whom a residential subscriber has an established business relationship which has not been terminated in writing by either party and which is related to the nature of the established business relationship;*

*by or on behalf of any person or entity with whom a residential subscriber is an existing customer, unless the customer has stated to the person or entity or the person's or entity's agent that he or she no longer wishes to receive the telemarketing sales calls of the person or entity, or unless the nature of the call is unrelated to the established business relationship with the existing customer;*

*by or on behalf of an organization that is exempt from federal income taxation under Section 501(c) of the Internal Revenue Code (26 USC 501(c)), but only if the person making the telephone solicitation immediately discloses all of the following information upon making contact with the consume:*

*the caller's true first and last name; and*

*the name, address, and telephone number of the organization;*

*by or on behalf of an individual licensed under the Real Estate License Act of 2000 [225 ILCS 454] or as an insurance producer under the Illinois Insurance Code [215 ILCS 5] who either:*

*is setting or attempting to set a face to face appointment for actions relating to that individual's real estate or insurance business; or*

*is encouraging or attempting to encourage the purchase or rental of, or investment in, property, goods, or services, which cannot be completed, and for which payment or authorization of payment is not required, until after a written or electronic agreement is signed by the residential subscriber; or*

*until July 1, 2005, by or on behalf of any entity over which the Federal Communications Commission or the Illinois Commerce Commission has regulatory authority to the extent that, subject to that authority, the entity is required to maintain a license, permit, or certificate to sell or provide telecommunications service, as defined in Section 13-203 of the Public Utilities Act [220 ILCS 5/13-203], while the entity is engaged in telephone solicitation for inter-exchange telecommunications service, as defined in Section 13-205 of the Public Utilities Act [220 ILCS 5/13-205], or local exchange telecommunications service, as defined in Section 13-204 of the Public Utilities Act [220 ILCS 5/13-204] or to the extent, subject to the regulatory authority of the Federal Communications Commission, the entity is defined by Title 47 Section 522(5) of the*

*United States Code (47 USC 522(5)), or providers of information services as defined by Title 47 Section 153(20) of the United States Code (47 USC 153(20)). (Section 5 of the Act)*

#### Section 300.30 Federal Rules

The federal rules for the restriction of telemarketing calls are found at 47 CFR 64.1200 for the Federal Communications Commission and at 16 CFR 310 for the Federal Trade Commission.

### SUBPART B: RESTRICTED CALL REGISTRY

#### Section 300.100 Establishment and Maintenance of the Registry

- a) *The Commission shall establish and provide for the operation of a Restricted Call Registry. The national "do-not-call" registry established and maintained by the Federal Trade Commission, pursuant to 16 C.F.R. 310.4 (b)(1)(iii)(B) shall serve as the Illinois Restricted Call Registry.*
- b) *The Registry shall contain a list of the telephone numbers of residential subscribers who do not wish to receive telephone solicitation calls. (Section 20 of the Act [815 ILCS 402/20])*

#### Section 300.110 Use of the Registry

- a) *Information pertaining to residential subscribers in the Registry is confidential and shall be afforded reasonable privacy protection except as necessary for compliance to avoid making or causing to be made any telephone solicitations calls to any residential subscriber more than 45 days after the person or entity obtains the Registry or any update of the Registry on which the residential subscriber's telephone number or numbers first appear and in a proceeding under Subpart E. The information is not a public record under the Freedom of Information Act [5 ILCS 140]. (Sections 10 and 20 of the Act [815 ILCS 402/10 and 20])*
- b) *A person or entity that obtains the Registry shall not use the Registry for any purpose other than to comply with the Act. These unlawful purposes include, but are not limited to, causing a subscriber to participate in and be included in the Registry without the subscriber's knowledge or consent, selling or leasing the Registry to a person other than a telephone solicitor, selling or leasing by a telephone solicitor of the Registry, and a telephone solicitor, either directly or indirectly, persuading a subscriber with whom it has an established business relationship to place his or her telephone number in the Registry, if the solicitation has the effect of preventing competitors from contacting that solicitor's customers. (Section 20 of the Act)*

- c) *No person or entity that sells, leases, exchanges, or rents telephone solicitation lists, except for directory assistance and telephone directories sold by telephone companies or their affiliates, shall include in those lists those telephone numbers that appear in the current Registry. (Section 20 of the Act)*

#### Section 300.120 Obligations of Telephone Solicitors

- a) *Prohibited calls. Beginning October 1, 2003, it is a violation of the Act for any person or entity may make or cause to be made any telephone solicitation calls to any residential subscriber more than 45 days after the person or entity obtains the Registry or any update of the registry on which the residential subscriber's telephone number or numbers first appear on the Registry. (Section 10 of the Act)*
- b) *Any person or entity conducting telephone solicitation calls within the State of Illinois shall purchase the Restricted Call Registry and updates no less frequently than every 3 months exclusively from the Federal Trade Commission. Failure to do so prior to conducting telephone solicitation calls is a violation subject to the penalties provided for in Subpart E. (Section 20 of the Act)*

#### Section 300.130 Enrollment of Residential Subscribers

Residential subscribers may enroll in the Registry using the methods prescribed by the Federal Trade Commission.

### SUBPART C: PUBLIC NOTIFICATION

#### Section 300.200 Public Notification

- a) *The Commission shall include, on its Internet web site, information to customers regarding their right to be included in the Registry and the various methods by which they may enroll. (Section 30 of the Act [815 ILCS 402/30])*
- b) *At least once per year, local exchange telecommunications companies shall notify their customers about the availability of and instructions for requesting information pertaining to the Registry from the Commission. Local exchange telecommunications companies shall provide this notice, using language developed by the Commission's Consumer Services Division, through a message on the customer's bill, or a notice in the information section of all telephone directories distributed to customers and shall include on their website a link to the Commission's web page for the Registry.*



## SUBPART D: COMPLAINT PROCEDURES

## Section 300.300 Complaint Procedures

The Commission and the Federal Trade Commission shall receive complaints from residential subscribers regarding telephone solicitations calls.

## SUBPART E: VIOLATIONS

## Section 300.400 Relief

- a) *The Commission may initiate administrative proceedings in accordance with this Part relating to a knowing and willful violation of Section 10 of the Act. (Section 35(a) of the Act [815 ILCS 402/35(a)]*
- b) Any enforcement proceedings for violation of the Act shall be conducted pursuant to 83 Ill. Adm. Code 200.
- c) *If it is determined after a hearing that a person has knowingly and willfully violated one or more provisions of Section 35 of the Act, the Commission may assess a fine not to exceed \$1,000 for the first violation and not to exceed \$2,500 for a second or subsequent violation. Each individual violation of Section 10 of the Act shall be a separate and distinct offense under this Section. In imposing a penalty under Section 35 of the Act, the Commission shall, at a minimum, consider the following factors:*
  - 1) *Whether the offense was knowing or willful;*
  - 2) *Whether the entity committing the offense has a prior history of non-compliance with the Act;*
  - 3) *The offender's relative ability to pay a penalty;*
  - 4) *Whether the offender has or has not cooperated with the Commission in pursuing the investigation; and*
  - 5) *Such other special, mitigating or aggravating circumstances as the Commission may find to exist.*
- d) No action or proceeding may be brought under this Section:
  - 1) *More than one year after the person bringing the action knew or should have known of the occurrence of the alleged violation; or*

- 2) *More than one year after the termination of any proceeding or action arising out of the same violation or violations by the State of Illinois, whichever is later. (Section 35 of the Act)*

Section 300.410 Exemptions

- a) *A person or entity may not be held liable for violating the Act if:*
  - 1) *The person or entity has obtained copies of the Registry and each updated Registry from the Federal Trade Commission and has established and implemented written policies and procedures related to the requirements of the Act;*
  - 2) *The person or entity has trained its personnel in the requirements of the Act;*
  - 3) *The person or entity maintains records demonstrating compliance with Section 40(a)(1) and (a)(2) of the Act and the requirements of the Act; and*
  - 4) *Any subsequent telephone solicitation is the result of unintentional error.*
- b) *A person or entity that has entered into a contract with another person or entity to make telephone solicitations on its behalf is not liable for a violation of the Act by the person or entity making telephone solicitations under the contract if the person or entity on whose behalf the telephone solicitations were made has provided written notification to the person or entity making telephone solicitations under the contract that it is necessary to comply with the provisions of the Act when making telephone solicitations. (Section 40 of the Act [815 ILCS 402/40])*

## STATE OF ILLINOIS

## ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission  
On Its Own Motion

## Implementation of the Restricted Call Registry Act

• • • • •

02-0845

DRAFT ORDER

By the Commission:

On August 9, 2002, the Restricted Call Registry Act ("Act") became law with the enactment of P.A. 92-0795. On December 17, 2002, the Illinois Commerce Commission ("Commission") entered an order that adopted emergency rules and that authorized the submission to the Illinois Secretary of State of the notices of emergency rules and proposed rules. These notices were published on January 10, 2003 to adopt rules by January 1, 2003 to implement the Act.

On October 1, 2003, the Commission Staff filed a motion in this proceeding that recounted the enactment of amendments to the Act in P.A. 93-0049. These amendments became effective on June 30, 2003. The Staff moved that the Commission take administrative notice of this Public Act, which the Commission agrees is proper to do. Staff further moved that the Commission withdraw the proposed rules published on January 10, 2003 in the *Illinois Register*, since these proposed rules no longer would implement the Act as amended by P.A. 93-0049. Attached to the motion were a draft order and new draft rules to be submitted to the Secretary of State. These draft rules represent the Staff's efforts to implement the Act as amended by P.A. 93-0049. Much of the draft rules represents a recitation of the statutory language of the Act.

The Commission is in agreement with the motion filed by Staff. The rules currently proposed to implement the Act no longer retain the relevancy necessary for proper implementation of the Act.

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) the Commission has jurisdiction over the subject matter herein;
- (2) the recitals of fact set forth in the prefatory portion of this order are supported by the record and are hereby adopted as findings of fact;
- (3) the Commission should take administrative notice of P.A. 93-0049;

- (4) the proposed rules for 14 Ill. Adm. Code 300, published in the *Illinois Register* on January 10, 2003 at 27 Ill. Reg. 438, should be withdrawn and a Notice of Withdrawal of Proposed Rules should be submitted to the Secretary of State pursuant to 1 Ill. Adm. Code 100.440;
- (5) the notice of proposed rules for 14 Ill. Adm. Code 300, as reflected in the attached Appendix, should be submitted to the Secretary of State pursuant to Section 5-40 of the Illinois Administrative Procedure Act;

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that a Notice of Withdrawal of Proposed Rules for 14 Ill. Adm. Code 300, published in the *Illinois Register* on January 10, 2003 at 27 Ill. Reg. 438, be submitted to the Secretary of State.

IT IS FURTHER ORDERED that the Notice of Proposed Rules for 14 Ill. Adm. Code 300, as reflected in the attached Appendix, be submitted to the Secretary of State pursuant to Section 5-40 of the Illinois Administrative Procedure Act.

IT IS FURTHER ORDERED that the Commission takes administrative notice of P.A. 93-0049.

IT IS FURTHER ORDERED that this Order is not final; it is not subject to the Administrative Review Law.

By order of the Commission this \_\_\_ day of \_\_\_\_\_, 2003.

(SIGNED) Edward G. Hurley

Chairman